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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,699	04/19/2004	Don McLemore	031312R019	9610

7590 05/17/2005  
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EXAMINER

GRAVINI, STEPHEN MICHAEL

ART UNIT PAPER NUMBER

3749

DATE MAILED: 05/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/826,699

Applicant(s)

MCLEMORE ET AL.

Examiner

Stephen Gravini

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 April 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 and 43 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-33 and 43 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### ***Claim Rejections - 35 USC § 102***

Claims 1-8, 22-25, and 43 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Wenker (US 6,234,162).

Claims 28-31 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ruble (US 4,553,525).

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenker in view of Howe (US 2,698,726). Wenker is considered to clearly anticipate the claimed invention, except for the claimed rotating plurality of legs. Howe, another grill stand, is considered to disclose a rotating plurality of legs at column 2 lines 16-36.

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It would have been obvious to one skilled in the art to combine the clearly anticipated teachings of Wenker with the rotating plurality of legs, considered disclosed by Howe, for the purpose of giving the stand flexibility with respect to the space it occupies. Furthermore, Wenker in view of Howe is considered to obviate the claimed invention except for the claimed outward angle. It would have been an obvious matter of design choice to provide the claimed angle, since the teachings of Wenker in view of Howe, would provide substantially the same result, using substantially the same means or way, in substantially the same way regardless of the radial outward angle.

Claims 12-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenker in view of Howe in further view of Winkel (US 5,944,008). Wenker in view of Howe is considered to obviate the claimed invention, as discussed above, except for the claimed sliding link members. Winkel, another cooking apparatus, is considered to disclose sliding link members at column 4 lines 11-49. It would have been obvious to one skilled in the art to combine the obvious teachings of Wenker in view of Howe with the sliding link members, considered disclosed by Winkel, for the purpose of giving the stand variable leg lengths and angles. Furthermore, Wenker in view of Howe in further view of Winkel is considered to obviate the claimed invention except for the claimed extended angle. It would have been an obvious matter of design choice to provide the claimed angle, since the teachings of Wenker in view of Howe in further view of Winkel, would provide substantially the same result, using substantially the same means or way, in substantially the same way regardless of the link member extended angle.

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Claims 20-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenker in view of Howe in view of Winkel in further view of Stringer (US 2,392,011). Wenker in view of Howe in view of Winkel is considered to obviate the claimed invention, as discussed above, except for the claimed U-shaped legs. Stringer, another cooking apparatus, is considered to disclose U-shaped legs on the first page of the right column lines 25-35. It would have been obvious to one skilled in the art to combine the obvious teachings of Wenker in view of Howe in view of Winkel with the U-shaped legs, considered disclosed by Stringer, for the purpose of providing a channel leg arrangement for a cooking stand. Since claim 21 recites an intended use that the coupling means for coupling the grill assembly and support stand, it is considered that the sixth paragraph of 35 USC 112 is invoked. As such, the teachings of Wenker in view of Stringer can be construed to obviate the claimed invention with or without secondary references Howe or Winkel.

Claims 26-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wenker in view of Mejyr et al. (US 3,785,361). Wenker is considered to clearly anticipated the claimed invention, except for the claimed fuel supply line. Mejyr, another grill stand device, is considered to disclose a fuel supply line at column 2 lines 1-53. It would have been obvious to one skilled in the art to combine the clearly anticipated teachings of Wenker with the fuel supply line, considered disclosed by Mejyr, for the purpose of allowing low pressure gas to provide a heat source for a cooking device.

Claims 32-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruble in view of Howe (US 2,698,726). Ruble is considered to clearly anticipated the

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claimed invention, except for the claimed rotating plurality of legs. Howe, another grill stand, is considered to disclose a rotating plurality of legs at column 2 lines 16-36. It would have been obvious to one skilled in the art to combine the clearly anticipated teachings of Ruble with the rotating plurality of legs, considered disclosed by Howe, for the purpose of giving the stand flexibility with respect to the space it occupies.

### ***Conclusion***

Newly discovered art necessitated new rejections. However, this action is non-final and represents the best prior art with respect to the claimed invention.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen Gravini whose telephone number is 571 272 4875. The examiner can normally be reached on normal weekday business hours (east coast time).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571 272 4475. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

SMG  
May 12, 2005

